

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE ANNUITY, PENSION, WELFARE
and APPRENTICESHIP SKILL
IMPROVEMENT AND SAFETY FUNDS
of the INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 137,
137A, 137B, 137C & 137R, AFL-CIO,
by its TRUSTEES EDWARD KELLY,
JEFFREY LOUGHLIN, PATER PATERNO,
ROSS PEPE, NICHOLAS SIGNORELLI and
NICHOLAS SIGNORELLI, JR. and JOHN
and JANE DOE, as Beneficiaries of the
ANNUITY, PENSION, WELFARE
and APPRENTICESHIP SKILL
IMPROVEMENT AND SAFETY FUNDS
of the INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 137,
137A, 137B, 137C & 137R, AFL-CIO,

Civil Action No.: 08-cv-2092

Honorable Stephen C. Robinson

Plaintiffs,

v.

NACIREMA ENVIRONMENTAL SERVICES
COMPANY, INC.,

Defendant.

**ANSWER TO COMPLAINT AND SEPARATE DEFENSES
ON BEHALF OF DEFENDANT
NACIREMA ENVIRONMENTAL SERVICES COMPANY, INC.**

Defendant Nacirema Environmental Services Company, Inc. (“Nacirema”), a New Jersey corporation, with principal offices at 211-217 W 5th Street, Bayonne, NJ 07002, by and through its attorneys, by way of Answer to the Complaint of Plaintiffs, says as follows:

1. Defendant neither admits nor denies the allegations contained in ¶1 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

JURISDICTION

2. Defendant neither admits nor denies the allegations contained in ¶2 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

3. Defendant neither admits nor denies the allegations contained in ¶3 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

THE PARTIES

4. Defendant neither admits nor denies the allegations contained in ¶4 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

5. Defendant neither admits nor denies the allegations contained in ¶5 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

6. Defendant neither admits nor denies the allegations contained in ¶6 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

7. Defendant neither admits nor denies the allegations contained in ¶7 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

8. Defendant neither admits nor denies the allegations contained in ¶8 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

9. Defendant neither admits nor denies the allegations contained in ¶9 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly leaves Plaintiff to their proofs.

10. Defendant admits the allegations contained in ¶10 of Plaintiffs' Complaint.

11. Defendant admits the allegations contained in ¶11 of Plaintiffs' Complaint.

12. Defendant admits the allegations contained in ¶12 of Plaintiffs' Complaint.

13. Defendant neither admits nor denies the allegations contained in ¶13 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

AS AND FOR A FIRST CAUSE OF ACTION

14. Defendant Nacirema hereby repeats its Answers to each and every allegation contained in the preceding Paragraphs of Plaintiffs' Complaint as though set forth at length herein and incorporate the same by reference.

15. Defendant neither admits nor denies the allegations contained in ¶15 of Plaintiffs' Complaint as any alleged Collective Bargaining Agreement speaks for itself and, further, the same calls for a legal conclusion and accordingly leaves Plaintiffs to their proofs.

16. Defendant neither admits nor denies the allegations contained in ¶16 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly leaves Plaintiff to their proofs.

17. Defendant denies the allegations contained in ¶17 of Plaintiffs' Complaint.

18. Defendant denies the allegations contained in ¶18 of Plaintiffs' Complaint.

19. Defendant neither admits nor denies the allegations contained in ¶19 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly leaves Plaintiff to their proofs.

20. Defendant denies the allegations contained in ¶20 of Plaintiffs' Complaint.

WHEREFORE, Defendant Nacirema respectfully requests a determination dismissing each and every Count and/or Claim in the Complaint of Plaintiffs with Prejudice, together with such other relief as the Court may deem appropriate.

AS AND FOR A SECOND CAUSE OF ACTION

21. Defendant Nacirema hereby repeats its Answers to each and every allegation contained in the preceding Paragraphs of Plaintiffs' Complaint as though set forth at length herein and incorporate the same by reference.

22. Defendant neither admits nor denies the allegations contained in ¶22 of Plaintiffs' Complaint as the same represents a legal conclusion and further any alleged Collective Bargaining Agreement and/or ERISA speak for themselves and accordingly leaves Plaintiffs to their proofs.

23. Defendant neither admits nor denies the allegations contained in ¶23 of Plaintiffs' Complaint as the same represents a legal conclusion and further any alleged Collective Bargaining Agreement and/or ERISA speak for themselves and accordingly leaves Plaintiffs to their proofs.

24. Defendant denies the allegations contained in ¶24 of Plaintiffs' Complaint.

25. Defendant denies the allegations contained in ¶25 of Plaintiffs' Complaint.

WHEREFORE, Defendant Nacirema respectfully requests a determination dismissing each and every Count and/or Claim in the Complaint of Plaintiffs with Prejudice, together with such other relief as the Court may deem appropriate.

Dated: Harrison, New Jersey
May 2, 2008

TOBIA & SORGER ESQS., LLC

/s/ Ronald L. Tobia, Esq.

BY: RONALD L. TOBIA, ESQ. (RT-9775)
Attorneys for Defendant Nacirema Environmental
Services Company, Inc.
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, for failure to state a claim on which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as Defendant paid Plaintiff Local 137 Joint Funds the amount of \$22,547.00 for the time period April, May, October, November and December 2006 in full satisfaction of the alleged delinquency contained in the Complaint.

THIRD SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as this matter is subject to arbitration under the Parties' alleged Collective Bargaining Agreement.

FOURTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as Defendant has already paid benefits to Operating Engineers, Local Union 825 on behalf of the individuals for the time period in question in the Complaint, in the amount of \$2,163.10 for the month of November 2006.

FIFTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, by the doctrine of accord and satisfaction.

SIXTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either whole or in part, as Defendant offered to permit an audit.

SEVENTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as Defendant Nacirema acted in good faith.

EIGHTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, as any award in this matter would result in the unjust enrichment of Plaintiffs.

NINTH SEPARATE DEFENSE

The Complaint is barred by the doctrine of equitable estoppel.

TENTH SEPARATE DEFENSE

Defendant Nacirema reserves the right to rely on any defense which may become available during the course of discovery or at Trial.

WHEREFORE, Defendant Nacirema demands judgment dismissing Plaintiffs' Complaint with prejudice together with attorney's fees and costs of the within action and such other relief as the Court may deem appropriate.

Ronald L. Tobia, Esq. (RT-9775)
TOBIA & SORGER ESQS., LLC
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000
Attorneys for Defendant Nacirema Environmental Services Company, Inc.

/s/ Ronald L. Tobia, Esq.

RONALD L. TOBIA

DATED: May 2, 2008

DESIGNATION OF TRIAL COUNSEL

Please take notice that Ronald L. Tobia, Esq. and Jill Tobia Sorger, Esq. (JS-5898) are designated as trial counsel for the Defendant Nacirema Environmental Services Company, Inc. in the above matter.

Ronald L. Tobia, Esq. (RT-9775)
TOBIA & SORGER ESQS., LLC
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000
Attorneys for Defendant Nacirema Environmental Services Company, Inc.

/s/ Ronald L. Tobia, Esq.
RONALD L. TOBIA

DATED: May 2, 2008

CERTIFICATION

This is to certify that a copy of the within Answer has been served within the period of time prescribed by the Rules of Court, as extended by Stipulation Extending Time to Answer the Complaint Ordered on April 4, 2008 by the Honorable Stephen C. Robinson, U.S.D.J.

/s/ Ronald L. Tobia, Esq.
RONALD L. TOBIA

DATED: May 2, 2008

PROOF OF SERVICE

I hereby certify that on this 2nd day of May 2008 I caused a true and correct copy of the foregoing Answer to Complaint and Separate Defenses on Behalf of Defendant Nacirema Environmental Services Company, Inc. to be served electronically upon:

James M. Steinberg, Esq.
Brady McGuire & Steinberg, P.C.
603 Warburton Avenue
Hastings-on-Hudson, New York 10706
Attorneys for Plaintiffs

Ronald L. Tobia, Esq. (RT-9775)
TOBIA & SORGER ESQS., LLC
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000
Attorneys for Defendant Nacirema Environmental Services Company, Inc.

/s/ Ronald L. Tobia, Esq.
RONALD L. TOBIA

DATED: May 2, 2008

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS	The Annuity, Pension, Welfare and apprenticeship Skill Improvement and Safety Funds Of the International Union of Operating Engineers, Local 137, 137A, 137B, 137C & 137R,	DEFENDANTS	Nacirema Environmental Services Company, Inc.
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)		
JAMES M. STEINBERG (JS-3515), Brady McGuire & Steinberg, P.C., 603 Warburton Avenue Hastings-on-Hudson, New York 10706 (914) 478-4293)	RONALD L. TOBIA, ESQ. (RT-9775), Tobia & Sorger, Esqs., LLC, 500 Supor Blvd., Harrison, NJ 07029 (973)-746-6000)		
CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)			
Benefit Funds are seeking alleged delinquent contributions			

Has this or a similar case been previously filed in SDNY at any time? No Yes? Judge Previously Assigned

If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

				ACTIONS UNDER STATUTES				
		TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES			
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	[] 610 AGRICULTURE [] 620 FOOD & DRUG [] 625 DRUG RELATED	[] 1422 APPEAL 28 USC 158 [] 1423 WITHDRAWAL 28 USC 157	[] 400 STATE REAPPORTIONMENT [] 410 ANTITRUST [] 430 BANKS & BANKING [] 450 COMMERCE/ICC [] 460 RATES/ETC [] 470 DEPORTATION [] 480 CONSUMER CREDIT [] 490 CABLE/SATELLITE TV [] 500 SECURITIES/ COMMODITIES/ EXCHANGE [] 510 SELECTIVE SERVICE [] 550 SECURITIES/ COMMODITIES/ EXCHANGE			
[] 110 INSURANCE [] 120 MARINE [] 130 MILLER ACT [] 140 NEGOTIABLE INSTRUMENT [] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT [] 151 MEDICARE ACT [] 152 RECOVERY OF DEFECTED STUDENT LOANS (EXCL VETERANS) [] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS [] 160 STOCKHOLDERS SUITS [] 190 OTHER CONTRACT [] 195 CONTRACT PRODUCT LIABILITY [] 196 FRANCHISE	[] 310 AIRPLANE [] 315 AIRPLANE PRODUCT LIABILITY [] 320 ASSAULT, LIBEL & SLANDER [] 330 FEDERAL EMPLOYERS' LIABILITY [] 340 MARINE [] 345 MARINE PRODUCT LIABILITY [] 350 MOTOR VEHICLE [] 355 MOTOR VEHICLE [] 360 OTHER PERSONAL INJURY	[] 362 PERSONAL INJURY - MED MALPRACTICE [] 365 PERSONAL INJURY PRODUCT LIABILITY [] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY [] 370 OTHER FRAUD [] 371 TRUTH IN LENDING [] 380 OTHER PERSONAL PROPERTY DAMAGE [] 385 PROPERTY DAMAGE PRODUCT LIABILITY	[] 630 LIQUOR LAWS [] 640 RR & TRUCK [] 650 AIRLINE REGS [] 660 OCCUPATIONAL SAFETY/HEALTH [] 690 OTHER	[] 1424 PROPERTY RIGHTS [] 1820 COPYRIGHTS [] 1830 PATENT [] 1840 TRADEMARK	[] 1800 SOCIAL SECURITY [] 1861 MIA (1395FF) [] 1862 BLACK LUNG (923) [] 1863 DIWC (405(g)) [] 1864 SSID TITLE XVI [] 1865 RSI (405(g))	[] 1875 CUSTOMER CHALLENGE [] 1876 12 USC 3410 [] 1891 AGRICULTURE ACTS [] 1892 ECONOMIC STABILIZATION ACT [] 1893 ENVIRONMENTAL MATTERS [] 1894 ENERGY ALLOCATION ACT [] 1895 FREEDOM OF INFORMATION ACT [] 1900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE [] 1950 CONSTITUTIONALITY OF STATE STATUTES [] 1890 OTHER STATUTORY ACTIONS		
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	[] 710 FAIR LABOR STANDARDS ACT [] 720 LABOR/MGMT RELATIONS [] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT [] 740 RAILWAY LABOR ACT [] 750 OTHER LABOR [] 760 LITIGATION [] 770 EMPL. RET. INC. [] 780 SECURITY ACT	[] 1710 FAIR LABOR STANDARDS ACT [] 1720 LABOR/MGMT RELATIONS [] 1730 LABOR/MGMT REPORTING & DISCLOSURE ACT [] 1740 RAILWAY LABOR ACT [] 1750 OTHER LABOR [] 1760 LITIGATION [] 1770 EMPL. RET. INC. [] 1780 SECURITY ACT	[] 1870 TAXES [] 1871 IRS-THIRD PARTY 20 USC 7609			
[] 210 LAND CONDEMNATION [] 220 FORECLOSURE [] 230 RENT LEASE & EJECTMENT [] 240 TORTS TO LAND [] 246 TORT PRODUCT LIABILITY [] 290 ALL OTHER REAL PROPERTY	[] 441 VOTING [] 442 EMPLOYMENT [] 443 HOUSING ACCOMMODATIONS [] 444 WELFARE [] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT [] 448 AMERICANS WITH DISABILITIES - OTHER [] 440 OTHER CIVIL RIGHTS	[] 510 MOTIONS TO VACATE SENTENCE 28 USC 2255 [] 530 HABEAS CORPUS [] 535 DEATH PENALTY [] 540 MANDAMUS & OTHER [] 550 CIVIL RIGHTS [] 555 PRISON CONDITION						

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ 28,595.38 OTHER JUDGE DOCKET NUMBER

Check YES only if demanded in complaint
JURY DEMAND: YES NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN X IN ONE BOX ONLY)

ORIGIN

1 Original Proceeding 2a. Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from (Specify District) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judge Judgment

2b. Removed from State Court
AND at least one party is a pro se litigant

(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION**IF DIVERSITY, INDICATE CITIZENSHIP BELOW.
(28 USC 1332, 1441)**

1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION 4 DIVERSITY
(U.S. NOT A PARTY)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)**DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)**

Nacirema Environmental Services Company, Inc.
211-217 W. 5th Street
Bayonne, NJ 07002

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

5/2/08

[] NO

RECEIPT #

[x] YES (DATE ADMITTED Mo. May Yr. 2000)
Attorney Bar Code # RT-9775

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)